

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2479

AN ACT

AMENDING SECTIONS 35-1001, 35-1002 AND 35-1004, ARIZONA REVISED STATUTES;
RELATING TO SWAP AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 35-1001, Arizona Revised Statutes, is amended to
3 read:

4 35-1001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Governmental entity" means this state, any county, city,
7 town, ~~municipality~~ or other political subdivision of this state or any
8 department, agency, board, commission, authority, ~~political subdivision~~,
9 public corporation or other public entity of any of the foregoing or
10 controlled by any of the foregoing, ~~provided that each of the foregoing must~~
11 ~~comprise a geographical area with a population of at least three hundred~~
12 ~~thousand persons according to the most recent United States decennial census~~
13 ~~or special census.~~ IF THE GOVERNMENTAL ENTITY IS A CITY OR TOWN, THE CITY OR
14 TOWN MUST HAVE A POPULATION OF MORE THAN FIFTY THOUSAND PERSONS.

15 2. "Obligations" means bonds, notes, bond anticipation notes,
16 commercial paper or other evidences of indebtedness or lease, installment
17 purchase or other agreements or purchasing programs or certificates of
18 participation.

19 3. "Swap agreement" means an agreement, between a governmental entity
20 and a financial institution, including an insurance company, ~~A~~ bank indemnity
21 company or a company related to a financial institution, pursuant to which
22 payments are to be made by the governmental entity to the financial
23 institution and are also to be made by the financial institution to the
24 governmental entity, and which is entered into in order to manage interest
25 rate risk, investment risk, or commodity prices or is entered into in
26 connection with carrying or securing of obligations of a governmental entity.

27 Sec. 2. Section 35-1002, Arizona Revised Statutes, is amended to read:

28 35-1002. Swap agreements: provisions: purposes: credit
29 enhancement

30 A. A governmental entity may enter into, modify, amend and terminate
31 one or more swap agreements that it determines to be necessary or desirable
32 in connection with, or incidental to, the conduct of its activities including
33 in connection with the issuance, carrying or securing of obligations or the
34 acquisition or carrying of investments. A governmental entity may enter into
35 swap agreements which are to be effective at a future date or which
36 constitute an option to enter into swap agreements. Swap agreements entered
37 into by a governmental entity shall contain such provisions, including
38 payment, term, security, collateralization, termination penalty, default and
39 remedy provisions, and shall be with such parties as the governmental entity
40 determines to be necessary or desirable after due consideration to the
41 creditworthiness of the parties. If the party to the swap agreement which is
42 not the governmental entity is not rated by a nationally recognized rating
43 agency in one of the top two rating categories of the rating agency at the
44 time the swap agreement is entered into, the party shall collateralize its
45 obligations under the swap agreement with securities or cash acceptable to

1 the governmental entity. Swap agreements may be payable from revenues of a
2 utility undertaking, excise taxes, ad valorem taxes, street and highway
3 revenues, monies that may be pledged to pay debt service on any bonds or
4 other long-term obligations relating to the swap agreements, or any other
5 legally available monies, as determined by the governmental entity.

6 B. A governmental entity shall not enter into a swap agreement other
7 than for the purpose of managing an interest rate, commodity price,
8 investment or similar risk that arises in connection with, or incidental to,
9 the activities of the governmental entity. A governmental entity shall not
10 carry on a business of acting as a dealer in swap agreements.

11 C. In connection with entering into any swap agreement a governmental
12 entity may enter into agreements which enhance the governmental entity's
13 credit in the swap agreement or enhance the liquidity of the swap agreement,
14 including a line of credit, letter of credit, insurance policy or other
15 security.

16 D. BEFORE ENTERING INTO A SWAP AGREEMENT, A GOVERNMENTAL ENTITY MUST:
17 1. REQUIRE ITS CHIEF FINANCIAL OFFICER TO ESTABLISH A SWAP AGREEMENT
18 POLICY THAT SETS FORTH GUIDELINES AND PARAMETERS FOR THE USE OF SWAP
19 AGREEMENTS THAT ARE CONSISTENT WITH RECOMMENDATIONS OF NATIONALLY RECOGNIZED
20 RATING AGENCIES.

21 2. ENGAGE AN INDEPENDENT ADVISOR WITH AT LEAST FIVE YEARS OF EXPERTISE
22 IN REVIEWING SWAP AGREEMENTS TO REVIEW THE PROPOSED SWAP AGREEMENT AND
23 DETERMINE THAT THE PROPOSED SWAP AGREEMENT COMPLIES WITH THE POLICY ADOPTED
24 PURSUANT TO PARAGRAPH 1 AND IS FISCALLY APPROPRIATE FOR THE GOVERNMENTAL
25 ENTITY TO ENTER INTO. FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT
26 ADVISOR" MEANS AN ENTITY OR ORGANIZATION THAT IS NOT AFFILIATED WITH THE
27 FINANCIAL INSTITUTION AND THAT IS CHOSEN THROUGH A COMPETITIVE PROCUREMENT
28 PROCESS, INCLUDING SUBMITTING A LIST OF ALL SIMILAR TRANSACTIONS THAT THE
29 BIDDER HAS REVIEWED OR ENGAGED IN DURING THE FIVE YEARS IMMEDIATELY PRECEDING
30 THE BID.

31 3. RECEIVE A STATEMENT FROM THE FINANCIAL INSTITUTION WITH WHICH THE
32 GOVERNMENTAL ENTITY IS ENTERING INTO A SWAP AGREEMENT THAT DISCLOSES THE
33 PRICING AND TERMS OF THE PROPOSED SWAP AGREEMENT.

34 E. GOVERNMENTAL ENTITIES THAT ENTER INTO SWAP AGREEMENTS PURSUANT TO
35 THIS SECTION SHALL REPORT THE PRICING WITHIN SIXTY DAYS AFTER EXECUTION OF
36 THE AGREEMENT AND SHALL REPORT ANY RATING CHANGE FOR THE TRANSACTION WITHIN
37 FIVE DAYS TO THE DEPARTMENT OF REVENUE FOR REVIEW BY THE DEBT OVERSIGHT
38 COMMISSION ESTABLISHED BY SECTION 35-504.

39 Sec. 3. Section 35-1004, Arizona Revised Statutes, is amended to read:
40 35-1004. Treatment, calculation and payment of amounts due
41 under swap agreements

42 A. A governmental entity may deduct amounts ~~which~~ THAT the
43 governmental entity is to receive pursuant to swap agreements from the
44 amounts due on its bonds or other long-term obligations for the purposes of
45 determining:

1 1. Whether a governmental entity has satisfied statutory requirements
2 concerning revenue coverage that are applicable to its bonds or other
3 long-term obligations.

4 2. Whether a governmental entity has satisfied any maximum rate of
5 interest that may be paid on the bonds or other long-term obligations.

6 3. The amount of taxes, rates or charges to be levied or collected to
7 pay amounts due ~~upon ON~~ its bonds or other long-term obligations.

8 B. ~~Until payment of all obligations under swap agreements and the
9 expiration of the fiscal year in which swap agreements are paid in full, no
10 amounts collected for the purpose of paying amounts due under the swap
11 agreements shall be subject to the provisions of title 42, chapter 17,
12 article 2.~~